

TRANSCRIPT

PBA: Today, we share our exchange with Maître Caroline Duclercq ! Hello !

Caroline Duclercq : Hello!

PBA : Maître Caroline Duclercq, you are a lawyer and partner of a law firm called Medici. You also teach. You are the co-director of the University Diploma in internal and international Arbitration of the University of Montpellier. You also give lectures in international Arbitration law in several universities including the University of Versailles - Saint Quentin en Yvelines, Montpellier and Toulouse.

You are committed at several levels, including equality between women and men. You are a member of Arbitral Women, the leading international women's network in the area of international dispute resolution. You have also created an endowment fund called Medici for Equality which aims to support actions in the field of equality between women and men, as well as the fight against violence and discrimination against women.

We, therefore, have the pleasure of engaging with a committed woman with an exceptional career.

We are delighted that you have agreed to meet with us and we thank you again.

Caroline Duclercq : Thank you very much ! Thank you !

PBA : Today we will discuss a topic for which you have a certain awareness, the place of women in the world of arbitration.

Arbitration is a field with many qualities, flexibility, suitability for international affairs, free choice of arbitrators, confidentiality, and it is a growing area. However, the place of women as arbitrators and lawyers remains limited.

What is the current state of the place of women in Arbitration ? And what can we expect for its future ? How to improve the visibility and presence of women in the field of Arbitration as well as increase their appointment as arbitrators ? How to achieve a fair representation and ideally a certain parity?

These are some of the questions we will try to answer.

Caroline Duclercq : I am very happy to participate in your podcast on the subject of being a woman in Arbitration ! As you said, it is a subject that has been close to me and my work for over 10 years now.

Indeed, if the equality of women and men is a subject that cannot be ignored for you and your generation, it has not always been the case. This single observation already shows the very great progress of the place of women in the world of law and more particularly in Arbitration — and for that alone we can be delighted !

But if I go back to the early 2000s when I first started practicing, this subject was not talked about. It was rarely discussed. The rare times when it was, it was often considered as a subject reserved for the toughest feminists. And we often heard people saying « *You make a big deal out of this equality issue but there is no question ! Of course, women are equal to men !* ». When I would raise questions about the subject, I was given this answer. Obviously, I wish that it was that simple, except it wasn't.

The problem was also that in the early 2000s, there were hardly any statistics. However — as we will see later — statistics and figures are critical. We can only fight what we know and understand. Figures and statistics are often the best answers to the — not so rare — problem of denial of the existing inequality. It was more difficult during the 2000s to be fully aware of the extent of the existing inequality in the world of Arbitration. Gradually, and at different levels, the legal world took hold of the issue.

The first level, which was very symbolic and important in the legal world, was when the Bar took up the matter at hand. The first statistics were drawn up. And then it was followed by the collaborative effort of colleagues of both genders. Many conferences were organized, articles were written, and associations created. Even a few lawyer's union took an active hold of the matter. I can't help but think about my partner, Valence Borgia, who draw me into me being more aware of this issue. She is one of the reasons why when we founded our firm, we created this endowment fund for equality and diversity. For us, this issue was critical, we often way that it is in the DNA of our law firm.

Nowadays, we have statistics and figures, I imagine that you will ask about them and if so, I'd love to share them. As this is a fairly common topic for me to talk about, It allows me to follow up on the statistics each year. I updated them for our talk and we can see together the latest trends.

PBA : To bounce back on what you told us, we obviously know that there are some great female figures in Arbitration, but what about the facts ? And therefore, what about the statistics ?

Caroline Duclercq : Indeed, there are a few central female figures in the field. I could name Brigitte Stern for example or, Gabrielle Kauffman-Keller, but we could name many more.

Regarding Brigitte Stern, she is, for me, an emblematic figure. She was one of the pioneers who found a place in a world that was particularly masculine. She is one of those extremely brilliant women who have succeeded in asserting themselves in a very masculine world. She has paved the way for us and for that we can only be grateful. But these names shouldn't be used — and unfortunately, they sometimes are — as alibis to show that women have always been present in the world of Arbitration. Indeed, when the talk inequality in the world of arbitration is brought up, It isn't uncommon to hear « *Look at Brigitte Stern, she is essential in investment Arbitration, therefore, women always had their place* ». Obviously, Brigitte Stern has her place, there is no doubt about it, but unfortunately, she is still one of the few female names that you come across regularly. We shouldn't take these few names and make it a generality. Some women are just as talented as certain very well-know men, that we do not hear about them. To answer your question, there are women recognized and known in Arbitration but unfortunately, they are still too few.

PBA : Do you think it's harder for women to become partners or be appointed as an arbitrator? What would be the causes of this non-visibility of these brilliant women ?

Caroline Duclercq : There are two questions to answer. You asked if it is more difficult for a woman to become a partner or be appointed as an arbitrator? I suggest we take a look at the statistics to answer, for which it is with the help of these figures that I will be able to answer you. If we look up at the statistics of the Bar, there are 65% of women in Bar schools but only 56% of women lawyers in France. Except that there are only 38% of women of the Paris Bar, who are now partners in law firms. And even more peculiar, only 20% are partners in business firms. On the other hand, women represent more than 65% of the associates. As we can note how far we are from equality in regard to the number of female partners in law firms, we will later see that we can draw the same picture in the world of arbitrators. We are still a long way from equality.

To these figures, you could answer that « *if there is 65% of student-lawyers who are women and it has been more than 30 years that women are more than 50% in Bar school, naturally, we should find 50% or 65% of women who are now partners* ».

Except that things are not that easy. As I told you, it's been 30 years that there are more than 50% of women in Bar schools and today, on the other hand, we only find 38% of women partners in law firms. So no, equality will not be obtained naturally, we must take initiatives to achieve it.

But this isn't solely a French problem. If we look, for example, at our English friends, in a study by the Solicitors Regulation Authority, women represent 48% of the associates and only 33% of the partners in English firms. Therefore, we end up with the same difficulty. Thus, it is not a French specificity. And then if we take more precisely into account the world of Arbitration, it is interesting to see that in 2019 out of the 1476 arbitrators appointed to the ICC, 1,164 were men while only 312 appointed arbitrators were women,. This means that only 21% of the ICC arbitrators were women. The good news is that, in 2018, we were at 18.4% and in 2017, 16%. We can still see that in 2 years we have gone from 16% to 21%.

In fact, it is quite interesting to see that the ICC had its first all-female tribunal in 2018. It is something quite surprising. It is not at all uncommon to find arbitrator tribunal composed exclusively of men, while the first exclusively female-composed was 4 years ago.

Again, this is not a specificity of the ICC, if we take the Court of London, we have 26% of the arbitrators appointed, in 2019, were women. We are still far but it is also increasing. Concerning the International Chamber of Arbitration of Vienna, the figures show 16% in 2019 and 24% in 2018. So if we can be glad that for certain international chambers, a positive evolution of the place of women in arbitration can be seen, we must remember that nothing is acquired.

In investment arbitration, we can draw the same conclusion. In 2018, there were 24% of women appointed as arbitrators and in 2019, only 19%. So things are going a little better, but we are still very far from equality.

I had done another exercise that might interest you. For firms, there are no specific statistics to the arbitration firm and arbitration teams. I used different classifications to make a point. If we take as a basis *Décideurs 2021*, which has just been released, we see that there are only 26% of women named in the International Arbitration category. This is already better than in 2019, where it was only 22% and in 2015 when it was only 13%. So we can see that it is improving. I wouldn't be able to tell if this improvement is because there are more female partners or it is because these women are more visible. If we look at the ranking of theist arbitrators, we can see that women represent only 15% of them. We are very, very far from equality.

Another interesting ranking is the *Who's who legal*. If we take the leaders in France, there are 18% of women. But the very good surprise is for future leaders, which shows the next generation — and I wish you to be in it — and we can see that there is 50% of women in the people named. It's extremely encouraging. Is it because there are more women in this next generation, or is it because these women have realized the importance of visibility and made themselves visible? In any case, they managed to be listed on equal terms with men for the category future leaders. I hope that it is a combination of the two, that there are more women and that they are more visible.

PBA : For you, what was the cause of this low presence of women? From this low visibility, sorry? Why are women less visible?

Caroline Duclercq : There are several causes of inequality. Probably, the first reason is the natural tendency that we find in the world of law — in the world of arbitration and more generally in any sector of activity — it is the natural tendency to inter-self, to endogamy. We prefer to surround ourselves with what we know, with what resembles us. We can take the parallel of young arbitrators. They tend to appoint a rather young court president. University professors will also tend to appoint a professor as court president. That's why, as arbitrators are mostly men, they tend to appoint men. This is a phenomenon that is not unique to arbitration. Women also have responsibility. For example, I force myself to put one or two women on the president's lists, when I have to give 3 or 4 names. This endogamy will evolve, because we have seen that in the new generation there will be more women.

On visibility, there is a real awareness. Through lectures, speeches, at the Bar School there are courses on the place to take when you become a lawyer. Visibility is essential today for lawyers, and for both genders obviously.

PBA : How do you see the place of women in Arbitration in the future? Are you still optimistic with all these statistics ?

Caroline Duclercq : We must remain optimistic. Even if we are far from equality, things are improving. I want to remain optimistic because this is a topic that is increasingly debated, which makes this phenomenon visible. I remain optimistic because among the many women who are becoming aware of the problem, other actors have taken up the issue. With all these forces combined, we will be able to try to strive for greater equality.

I am thinking in particular of the institutions which have all their places. As such, we can praise the CCI - which is a major institution - which for years has tackled this difficulty. For example, on the issue of visibility, since 2016, the ICC has published, with the agreement of the parties and the arbitrators, the names of the arbitrators who are appointed in their cases. Suddenly today we have access to the names of women on the CCI website. We were told « *I am willing to name women but I don't know them* ». Now you just have to

go to the ICC website, there are names of women appointed referees. It's hard to say that you don't know women. If we go back to the statistics, the CCI participated in 43% of the appointments of women. For the SCIA, it is responsible for 48% of female appointments. We need these institutions which seize on and do something.

Customers also have some responsibility. They have taken up this issue by creating classifications with the Montesquieu circle. They also look at how the firms act in terms of equality, the composition of partners and associates. This may become a criterion in the choice of firms and in the choice of arbitrators. And then with the feminization of legal departments, we can hope that this endogamy will also turn in favor of women. We always come back to the issue of visibility.

PBA : Thank you very much! And then finally, could you give three tips to women beginning their career in Arbitration ?

Caroline Duclercq : So as I often say, Kennedy's great statement takes on its full meaning on the issue of equality and the promotion of women in Arbitration. I often say that we should not ask what institutions, clients or firms can do to achieve this equality, but ask ourselves, what we can do to change things.

We have seen that visibility was a major factor. As much as possible, visibility must be promoted and for that, women must take their share of responsibility. We are often considered to be hard workers, contentious, precise and rigorous. These are qualities often recognized in women. And it's great to have excellent know-how, but you still have to make it known. My three tips will be turned towards the same axis: make yourself visible.

How do you make yourself visible ? You need to come out from behind your desks. There are a lot of conferences to go to and associations that have been created. We see it today, and your podcast shows it, there are a lot of ways to get out of behind your computer and make yourself known. You have to write articles. Within the firm, we are really pushing associates, even the youngest ones, to write. You have to participate in conferences and seminars. It is obviously more complicated now with the pandemic, we no longer have the opportunity to ask questions or meet people at cocktails. But as soon as possible, go for it ! Do not hesitate ! The first cocktails are quite perilous experiences because you don't know anyone and you might feel alone while everyone knows each other. But after a few events, it will become a pleasure to meet people. and develop your network.

It is very important, you have to develop your network. Your association is a perfect illustration, even the youngest realize the importance of building your network. The earlier you start your network, the more enjoyable the networking experience will be, because you will already know a lot of people!

And then there is a lot of networks specifically for women. I am thinking in particular of Arbitral Women, which you mentioned, it is one of the first networks of women in Arbitration that was created. It enables women to meet each other and to take action together. This is not a network limited to France, it is an international network. When you go to conferences or hearings abroad, it can be nice to know that you have the possibility of meeting other colleagues who are involved and who have the same values as you. I wouldn't be able to talk about all the existing networks, but there are many others, such as the Commercial Finance Association for under 40s.

PBA : We thank you for the time you took to meet us and for answering all our questions. We are sure that our exchange will be precious for students but also professionals, and all those who listen to us.